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**IN THE COURT OF THE SENIOR CIVIL JUDGE & J.M.F.C, BHATKAL,  
AT: BHATKAL.**

PRESENT: KANT KURANE  
B.Com. L.L.B [Spl.]  
SENIOR CIVIL JUDGE & JMFC, BHATKAL.

**CRIMINAL CASE NO. 1307/2025.**  
**DATED THIS 06<sup>th</sup> DAY OF APRIL-2026.**

**BETWEEN:**

1. THE JANATA CO-OPERATIVE CREDIT SOCIETY LTD., BHATKAL,  
HEAD OFFICE AT BHATKAL, & ONE OF ITS BRANCH AT: MURDESHAWAR,  
**REPRESENTATIVE BY ITS MANAGER:**  
MR. RAMCHANDRA S/O: MANJUNATH HEGADE  
AGED ABOUT: 31 YEARS, OCCU.: MANAGER,  
R/O : MURDESHAWAR, MAVALLI VILLAGE, BHATKAL TALUK.

----- **COMPLAINANT.**

**[BY SRI. J.D.BHAT ADVOCATE FOR COMPLAINANT]**

**AND:**

1. MR. VISWANATH S/O: RAMADAS NAIK  
AGE ABOUT: MAJOR YEARS, OCCU.: NOT MENTIONED,  
R/O: SHIRANI POST: KAIKANI, BHATKAL TALUK.

-----**ACCUSED.**

**[BY SRI. M/J. NAIK & SMT. N.T. NAIK ADVOCATES FOR ACCUSED]**

DATE OF COMPLAINT PRESENTED.	12/10/2022.
CASE RE-REGISTERED IN VIEW OF TRANSFER BY VIRTUE ORDER No.32 DATED: 07/03/2025 PASSED BY THE HON'BLE PRINCIPAL DISTRICT & SESSIONS JUDGE, KARWAR UTTAR KANNADA DISTRICT.	22/07/2025.
ALLEGED OFFENCES	SEC. 138 OF N.I ACT.
DATE OF PLEA RECORDED	23/10/2024.
DATE OF EVIDENCE COMMENCED	01/02/2025.
DATE OF STATEMENT U/S 313 OF CR.PC	23/02/2026
DATE OF EVIDENCE CLOSED	01/04/2026.
DATE OF JUDGMENT	06/04/2026.
OPINION OF COURT	AS PER FINAL ORDER.

Sd/-

KANT KURANE  
SENIOR CIVIL JUDGE & JMFC,  
BHATKAL.

**::JUDGMENT::**

The present private complaint is instituted under Sec.200 of Cr.P.C, by the complainant against the accused for the offence

punishable under Sec.138 of Negotiable Instrument Act. [**in short “ N.I Act”**], alleging therein that the accused, had issued a cheque in favour of the complainant which was dishonored due to **“Funds insufficient”** in the account of the accused.

**2. The brief factual matrix leading to the case is that:-**

The complainant is the Co-operative Financial Institution. On 20/01/2021, the mother of accused by name Smt. Laxmi Ramadas Naik had borrowed mortgage loan of Rs. 10,00,000/- from the complainant, agreeing to repay with interest. The accused is one of surety-holder/guarantor of loan borrowed by his mother. In order to secure the loan, the accused and Smt. Laxmi Ramadas Naik were executed all necessary documents in favour of complainant. Further, as on 09/11/2021, there was outstanding balance loan amount of Rs. 12,12,000/-. Further, on repeated request of complainant, the accused issued cheque No. 054781 dated 09/11/2021 sum of Rs.12,12,000/- pertaining to The State Bank of India Br. Kikini [Basti] in favour of complainant for repayment of loan.

3. As per the request of accused, the complainant had presented the said cheque to its banker for encashment, but the said Banker have returned the said cheque on 17/08/2022 to the complainant with

endorsement that the cheque was dishonored as **“ Funds insufficient”** in the account of the accused. Immediately, on 01/09/2022, [posted on 02/09/2022] the complainant had issued legal notice to accused through an advocate, calling up on the accused to repay the loan with interest. The accused received legal notice on 05/09/2022, but the accused did not repay the loan amount and he did not reply the legal notice. Hence, complainant is constrained to file present complaint against the accused.

4. On presentation of complaint, it was registered as P.C.R. No. 520/2022 on the file of the Addl. Civil Judge and JMFC, Bhatkal. The complainant was examined as contemplated under Sec.200 of Cr.PC., and his sworn statement was recorded. Further, when the facts of the complaint are constitutes the alleged offence and on sufficient material available on records and on appearance of prima-facie case, the cognizance was taken for the alleged offence against the accused and the criminal case was registered against the accused in C.C No. 2245/2022 on the file of Addl. JMFC, Bhatkal and than process was issued to accused under Sec.204 of Cr.P.C, directing the accused to be appear before the Court to answer the claim.

**5. During the pendency of case, this case was withdrawn from Addl. JMFC.,Bhatkal and transferred to this Court in view of order of Hon'ble Principal District Judge Court, Karwar vide order No. 32/2025 dated:07/03/2025. On receipt of records, the case was re-registered in the aforesaid number.**

6. In response to issuance of process of summons, the accused appeared before the Court through his Counsel and got enlarged him on bail. The substance of accusations were read over and explained to accused and the plea was recorded, read over and explained to him. The accused pleaded not guilty and claims to make defence.

7. In order to substantiate the claim, the complainant-Institution has examined its official as PW-1 and got marked documents as Ex.P.1 to 11. The PW-1 has filed his examination-in-chief by way of affidavit and got marked Ex.P.1 to 11 and reiterated all facts as stated in the complaint. In the instant case, the accused has pleaded not guilty and he denied the case of the complainant and that of the learned Counsel for accused has fully cross-examined the PW-1 and submitted no defence evidence on the part of accused.

8. Further, after completion of complainant evidence, the accused was examined under Sec. 313 of Cr.PC, the statement of accused was recorded, read over and explained to him. The accused denied all the incriminating evidence appeared against him and submitted that he has defence evidence, but subsequently, the learned Counsel for accused has submitted no defense evidence on the part of the accused. Hence, case was listed for final arguments.

9. Heard arguments both side and perused entire material records.

10. On careful perusal of entire material records, the points would arise for consideration are as under:–

**.P O I N T S:**

- 1. Whether the complainant proves that the accused had issued cheque of The State Bank of India Br. Kaikani [Basti] bearing its No. 054781 dated 16/08/2022 sum of Rs. 12,12,000/- in favour of complainant for the discharge of legally enforceable debt or liability and said cheque was dishonored as "Funds insufficient " in the account of accused and that of accused has failed to repay the amount even statutory notice was issued and thereby the accused***

***has committed offence punishable under Sec.138 of N.I Act?***

***2. What order?***

11. On careful perusal of all the entire material records, my findings to the above points are:

**: FINDINGS :**

**POINT NO.1: In the Affirmative.**

**POINT NO.2:** As per for my order for the following:

**: REASONS :**

**12. POINT NO.1:** The main allegations of complainant is that the accused had surety and guarantor of loan borrowed by his mother Smt. Laxmi Ramadas Naik . To secure the loan, the accused and above said loan borrower have executed all the necessary documents in favour of complainant, agreeing to repay it with interest. But, after the availment of loan amount, the accused and above said loan borrower were remain defaulters to repayment of loan. Hence, on the repeated request for repayment of loan amount, the accused had issued cheque in favour of complainant. On presentation of cheque, it was dishnoured with remark that “ **Funds insufficient** ” in the account of the accused. Hence, the complainant had issued legal notice to accused. The

accused received the said notice but the accused did not made any attempt to repay the loan and he did not reply the notice. Hence, the complainant has filed private complaint U/sec. 200 of Cr.P.C. against the accused for the offence punishable U/sec. 138 of N.I. Act. The learned Counsel for accused has fully cross examined the PW-1 and submitted no defence evidence on the part of accused.

13. With view to established its case, the complainant society has got examined its official as PW-1 and got marked Ex-P-1 to P-11. The learned Counsel for accused has fully cross-examined the P.W.1 and submitted no defence evidence on the part of the accused.

14. I have carefully gone through the entire material records on hand.

15. Before proceeding to the merits of the case, it is important to lay down the basic provision of law with respect to section 138 of the Negotiable Instruments Act, 1881 which is as follows:

**Section 138 in The Negotiable Instruments Act, 1881:**

*[138 Dishonour of cheque for insufficiency, etc., of funds in the account. — Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount*

*of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for [a term which may be extended to two years], or with fine which may extend to twice the amount of the cheque, or with both: Provided that nothing contained in this section shall apply unless—*

*(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;*

*(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the **said** amount of money by giving a notice in writing, to the drawer of the cheque, 20 [within thirty days] of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and*

*(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.*

*Explanation.— For the purposes of this section, “debt or other liability” means a legally enforceable debt or other liability.]*

16. In order to ascertain whether the accused has committed an offence U/Sec.138 NI Act, the following ingredients constituting the offence have to be proved:

*(a) The drawer of the cheque should have issued the cheque for the discharge, in whole or in part of a legally enforceable debt or other liability. (b) The cheque is returned by the bank unpaid, either because*

*of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank.*

*(c) The drawer of such cheque fails to make the payment of the said amount of money within fifteen days of the receipt of the notice from the payee or the holder in due course demanding the payment of the said amount of money.*

17. It is only when all the above mentioned ingredients are satisfied that the person who has drawn the cheque can be said to have committed an offence U/Sec. 138 NI Act.

18. Let-us, first see whether the complainant has complied the mandatory requirement of Sec. 138 of NI Act. To comply the mandatory requirement under Sec. 138 of NI Act, the complainant must comply the following ingredients:-

*1. Cheque must be presented within 3 months or within validity period whichever is earlier.*

*2. Cheque must be returned unpaid due to insufficient funds or it exceeds the amount arranged.*

*3. Fact of dishonour be informed to the drawer by notice within 30 days.*

*4. Drawer of cheque must fail to make payment within 15 days of receipt of the notice.*

19. In the instant case, the complainant has presented a cheque Ex.P.1 to the bank on 17/08/2022 [cheque dated: 16/08/2022] and on perusal of Ex-P-3, the bank memo, it is seen that the said cheque was dishonored on 17/08/2022 with remark that **"Funds insufficient"**. Further, it is seen that the complainant has issued notice to the accused through an advocate as per Ex.P.4 on 01/09/2022 and the said legal notice was served on 05/09/2022. Further, the complaint was presented on 12/10/2022. So, on close reading of above documents, it is noticed that the complainant has complied the mandatory provision U/sec. 138 of NI Act and complaint is in accordance with Sec.138 of NI Act. Furthermore, on perusal of entire material records, the accused has not disputed the mandatory provisions of Sec. 138 of NI Act.

20. To prove the offence under Sec. 138 of N.I. Act, the complainant has to firstly prove that the cheque in question has to be dishonored in the account maintained by the accused. A perusal of Ex.P.1 and 2, cheque and bank memo, it is seen that the original cheque is belongs to accused and it reveals that the cheque was presented for encashment and said cheque was returned with endorsement that **"Funds insufficient"** in the account of accused. So, the cheque involved

in this case is dis-honored in the account maintained by the accused and this fact is also not disputed by the accused.

21. Another most important ingredient of Sec. 138 of NI Act is that the cheque involved in the case must be issued for the repayment of legally enforceable debt.

22. It is alleged that the mother of the accused by name one Smt. Laxmi Ramadas Naik had borrowed mortgaged loan of Rs. 10,00,000/- from the complainant and that of the accused stood surety to the loan borrowed by Smt. Laxmi Ramadas Naik . To secure the loan, the accused and main loan borrower were executed certain documents in favour of the complainant, agreeing to repay the loan amount with agreed interest. But, thereafter, the accused and main loan borrower were not repaid the loan amount as agreed and promised. On repeated requests, finally, the accused issued the cheque in favour of the complainant for repayment of debt and when the cheque was presented to the bank then, the bankers have returned the said cheque with endorsement that **"Funds Insufficient"** bank in the account of the accused.

23. Admittedly, the cheque was in the possession and in the custody of the complainant and it was presented to the bank by the

complainant. Hence, the complainant is the holder in due course of cheque as contemplated U/Sec. 9 of NI Act and this fact is not disputed by the accused.

**24.** A perusal of Ex.P.7 to 11, the loan application, loan sanction order, loan agreement, on demand promissory note, cash receipt and details of loan account belongs to one Smt. Laxmi Ramadas Naik , it indicates that the mother of the accused by name Smt. Laxmi Ramadas Naik had borrowed mortgaged loan of Rs. 10,00,000/- from the complainant and it reveals that accused is stood surety for loan borrowed by Smt. Laxmi Ramadas Naik . In the instant case, the accused has not disputed that he is not the guarantor or surety holder of loan borrowed by Smt. Laxmi Ramadas Naik and the accused has not disputed the loan transaction and not disputed the issuance of cheque and signature on the cheque. Hence, on close reading of above documents, it is clear that one Smt. Laxmi Ramadas Naik had borrowed loan and it is seen that the accused is surety-holder of the loan borrowed by Smt. Laxmi Ramadas Naik. Hence, the cheque issued by the accused in favour of the complainant is legally enforceable debt.

**25.** Admittedly, present complaint is under section 138 of N.I. Act against the accused. In Criminal Law, it is well settled principles of law

that prosecution must prove its case beyond all reasonable doubts. The Negotiable Instruments Act is special enactment and there is special provisions of presumption U/sec. 118 and 139 of N.I. Act. So, the concept of proving the case beyond all reasonable doubts is not applicable to the case relating to the N.I. Act.

**26.** On plain reading of Sec. 118 and Sec. 139 of NI Act, it is clear that when the negotiable instrument is issued in favour of holder in due course of cheque, than it shall be presumed that the cheque is issued for consideration of debt and shall presumed that the cheque is received of the nature referred to in Sec. 138 of NI Act for the discharge, in whole or in part, of any debt or other liability, unless and until the contrary proved.

**27.** In the instant case, the complainant has proved that the cheque issued by the accused is legally enforceable debt. Admittedly, the accused has not adduce any defense evidence, but, in the cross examination of PW-1, the main defence of the accused is that ink appeared on words and figures appeared on cheque are differs, accused not issued cheque and contented that the accused has repaid entire loan amount and contented that at the time of sanctioning loan to the main borrower, the complainant had taken duly signed cheque

from the accused for security purpose and now the complainant had mis-utilized said cheque and filed this false case. but on perusal of entire material records, it is seen that the accused has not produced any oral as well as documentary evidence believe his above defense. In the instant case, the accused has admitted that he has issued cheque to the complainant for security purpose. It is settled principle of law that the issuance of cheque for security purpose is also come under the preview of definition of Section 138 of N.I.Act. Hence, the contention and defense of the accused is not acceptable and liable to be rejected. In the instant case, admittedly the accused has not adduce defense evidence. So, mere taking defense is not sufficient and it should be proved by adducing cogent evidence. Hence, from careful perusal of entire material records, it is noticed that the accused has failed to rebut the presumption available U/sec. 118 and 139 of N.I. Act.

**28.** In my ultimate analysis, in the present case, the complainant has proved his case that the loan borrowed by the accused is legally enforceable debt and it is proved that the accused has committed the alleged offence. Furthermore, in the instant case the accused has not adduce any defence evidence. So, the accused has failed to rebut the presumption available U/sec. 118 and sec.139 of NI Act. Hence, on

careful scrutiny of entire materials records, I am considered opinion that the accused has committed offence under Sec. 138 of NI Act and hence the accused is liable to be punished in accordance with law.

29. Sec.138 of NI Act prescribed punishment with imprisonment for a term which may be extend to two years or with fine which may extend to twice the amount of the cheque or with both. So, on plain reading of above proviso, it is clear that the imposing punishment is purely discretionary power of the Court. The case in hand I am not inclined to extend the benefit of the provisions of the Probation of Offenders Act, 1958, because the offence committed is in the nature of an economic offence and the progress of our nation depends on a healthy economy. Moreover, the real purpose behind the enactment of the said offence is to provide expeditious remedy to the payee or the holder of the cheque, and also to instill a sense of confidence and assurance to the business community. But considering the nature of the offence and the other involved facts and circumstances of this case, I am of view that some leniency is to be given to accused convicting him to sentence to pay fine amount with extend to cheque amount.

30. Furthermore, careful perusal of records, it is noticed that the complainant has proved that amount dues from the accused is

legally enforceable debt. So, it is the duty of the Court to compensate the complainant for the financial hardships and legal expenses faced while prosecuting the accused in this case. On perusal of records, it is noticed that complainant has initiated proceedings against the accused with allegations that accused has issued cheque of Rs. 12,12,000/-. Hence, exercising the powers conferred under Sec. 357 of Cr.PC, I am of considered view that to direct the accused to pay fine amount of Rs. 12,12,000/-. [Rupees Twelve Lakh, Twelve Thousand Only] as compensation to loss caused to complainant by the accused. Therefore, as reasons discussed supra, I am of considered view that the accused is committed the offence punishable under Sec. 138 of IN Act and ***I answer the Point No. 1 in the Affirmative.***

**31. POINT NO.2:** As reasons discussed supra, I proceed to pass the following:

**: ORDER :**

**Acting under Section 255(2) of Cr.P.C accused by name Sri. Vishwanath S/o: Ramadas Naik, is found guilty for the offence punishable under Sec. 138 of NI Act.**

**The accused is convicted with sentence to pay fine amount of Rs. 12,12,000/-. [Rupees Twelve Lakh Twelve**

**Thousand Only] for the offence punishable under Sec. 138 of NI Act.**

**In default of payment of fine amount, the accused shall undergo simple imprisonment for the period of six months.**

**Further, acting under Sec. 357 of Cr.PC, out of the fine amount, the accused is directed to pay Rs. 12,12,000/-. [Rupees Twelve Lakh Twelve Thousand Only] to complainant as a compensation.**

**The bail bond of accused and his surety bonds are hereby stands canceled forthwith.**

**Further, the cash security of Rs. 3,000/- pending Q-R No.1043/2025-26 dated: 12/12/2025 shall be refunded to accused, if the accused paid above said compensation amount to complainant, the accused furnished his bank account details.**

**The copy of judgment is supplied to accused with free cost immediately after pronouncement of judgment.**

**The right of the accused to prefer appeal against  
this judgment to the superior Court is hereby reserved.**

*(Dictated to the Stenographer directly on computer, typed by her, corrected by me and then pronounced in the Open Court  
on this 06<sup>th</sup> day of April-2026)*

**ANNEXURES:**

**1. LIST OF WITNESSES EXAMINED BY COMPLAINANT:**

P.W. 1 : Sri. Ramachandra S/o: Manjunath Hegade

**2. LIST OF DOCUMENTS GOT MARKED BY COMPLAINANT:**

Ex.P.1 : Cheque.  
Ex.P.2 : Bank Memo.  
Ex.P.3 : Copy of legal notice.  
Ex.P.4 : Postal receipt.  
Ex.P.5 : Postal Acknowledgment.  
Ex.P.6 : Copy of resolution.  
Ex.P.7 : Copy of loan application.  
Ex.P.8 : Copy of loan agreement.  
Ex.P.9 : Copy of On Demand Promissory Note.  
Ex.P.10 : Copy of cash receipt.  
Ex.P.11 : Copy of Bank Statement.

**3. LIST OF WITNESSES EXAMINED BY ACCUSED:**

- NIL-

**4. LIST OF DOCUMENTS GOT MARKED BY ACCUSED:**

-NIL-

Sd/-

KANT KURANE

SENIOR CIVIL JUDGE & JMFC, BHATKAL.